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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/610,488	06/30/2003	Georg Kormann	09160-US	5340
7590	06/21/2004		EXAMINER	
			MAMMEN, NATHAN SCOTT	
			ART UNIT	PAPER NUMBER
			3671	
DATE MAILED: 06/21/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/610,488 Examiner Nathan S Mammen	KORMANN ET AL. Art Unit 3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-8 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>6/30/03</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 6/30/03 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered. Specifically, the German references cited do not have an English abstract or a statement of relevance. It is noted that Applicant stated that a copy of the German Patent Office search report for the present invention would be provided to establish the relevance of the non-English references. However, no copy of the search report has been provided.

### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In the first sentence of the abstract, the phrase "The invention concerns" should be eliminated.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,241,371 to Horeth.

The Horeth '371 patent discloses an arrangement for withdrawal of samples from a flow of material flowing through a conveying channel (12). The conveying channel (12) is provided with a wall containing an opening through which the samples may be withdrawn. A guide element (13) is mounted to the conveying channel for movement between a sample withdrawal position in which it frees the opening and allows a sample to move through the opening and a closed position in which the guide element covers the opening. While the arrangement disclosed by the Horeth '371 is disclosed as being used to sample cuttings from drilling operations (col. 1, lines 10-11), the structure disclosed by Horeth is inherently capable of being used for the withdrawal of samples from a flow of harvested crop.

Regarding claims 2-4, 6, 7: The guide element (13) is mounted for pivoting between the withdrawal and closed positions. When the guide element is brought into the sample withdrawal position, the material moves through the opening in the wall. The guide element (13) is mounted for pivoting on an axis that is transverse to the direction of flow of materials. When the guide element is in the sample withdrawal position, the guide element is inclined less than 90 degrees relative to the direction of material flow. A drive (17) is coupled to the guide element for selectively pivoting the guide element.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,119,531 to Wendte et al.

The Wendte '531 patent discloses an arrangement for the withdrawal of samples from a flow of harvested crop flowing in a conveying channel (140). The conveying channel (140) comprises a wall containing an opening (220) through which crop samples may be withdrawn. A guide element (218) is mounted to the conveying channel for movement between a sample withdrawal position, in which a crop sample can move through the opening, and a closed position, in which the element covers the opening so as to prevent crop from moving through the opening (Fig. 3).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,241,371 to Horeth.

The Horeth '371 patent discloses the claimed invention, as stated above, except for the guide element being mounted for pivoting about an axis located in the center of the guide element (i.e., a butterfly arrangement). The Horeth '371 patent instead pivots the guide element about an axis located at the end of the guide element (i.e., a flapper arrangement). However, it would have been an obvious matter of design choice to utilize a butterfly arrangement, since Applicant has not disclosed that the particular pivot point of the guide element solves any stated problem or is for any particular purpose and it appears that the invention would perform equally

well with the guide element pivoting arrangement disclosed by the Horeth '371 patent. Furthermore, Horeth contemplates the use of other guide element arrangements ("...other valve means may be substituted for the hinged 'flapper' valves 13....").

8. Claims 2-4, 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,119,531 to Wendte et al. in view of U.S. Patent No. 5,959,218 to Strubbe and U.S. Patent No. 3,241,371 to Horeth.

The Wendte '531 patent discloses an arrangement for the withdrawal of samples, as stated in paragraph 4 above. The Wendte '531 patent further states that the arrangement for withdrawal of samples encompasses applications on forage harvesters (col. 3, lines 47-49). As shown in the Strubbe '218 patent, forage harvesters typically and normally have a discharge spout (Fig. 9 – 112). What the Wendte '531 patent does not disclose is that the arrangement for withdrawal of samples comprises a pivoting guide element. The Horeth '371 patent teaches that it is known in the art to provide an arrangement for withdrawal of samples with a pivoting guide element for facilitating the withdrawal of samples. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the arrangement for withdrawal of samples disclosed by the Wendte '531 patent with the pivoting guide element taught by the Horeth '371 patent, in order to provide a mechanism for positively aiding the withdrawal of flowing material.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959.

The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**

**NSM**  
**6/14/04**

**Nathan S. Mammen**